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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ADAM BRAND et al., Plaintiffs and Respondents, v. GEORGE CHUNG REALTY, INC. et al., Defendants and Appellants.	B198319 (Los Angeles County Super. Ct. No. SC086353)

APPEAL from a judgment of the Superior Court of Los Angeles County, Cesar C. Sarmiento, Judge. Affirmed.

Rombro & Associates, S. Roger Rombro and Melinda A. Manley for Defendants and Appellants.

June Babiracki Barlow and Neil D. Kalin for California Association of Realtors as Amicus Curiae on behalf of Defendants and Appellants.

Millard, Holweger, Child & Marton and Bradford T. Child for Plaintiffs and Respondents.

INTRODUCTION

Defendants George Chung Realty, Inc. and Fred Rabie appeal from a judgment in favor of plaintiffs Adam Brand and Eliza Brand. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Adam Brand and his wife, Eliza Brand, (collectively plaintiffs or Brands) wanted to buy a new home for their family and enlisted the services of Arlene Revilla (Revilla), a licensed realtor employed by broker RE/MAX Beach Cities & Westside Properties (RE/MAX). In August 2003, plaintiffs were shown property located at 4335 Sawtelle Boulevard in Culver City (the Property) and decided they wanted to purchase it. Amy Bray (Bray) owned the Property, and her listing and selling agent was broker George Chung Realty, Inc., doing business as George Chung Realtors (Chung) and its employee, Fred Rabie (Rabie), a licensed realtor. The purchase price was $430,000.

After plaintiffs and Bray entered into a written agreement for purchase of the Property, plaintiffs received and signed the Real Estate Transfer Disclosure Statement, required by Civil Code section 1102 et seq. It was also signed by Bray, Rabie on behalf of Chung, and Revilla on behalf of RE/MAX. The disclosure included a statement by Bray that "Freeway will be expanding" and a statement by Rabie that the Property was "[o]n a busy street – close to Frwy – Buyer has to pay attention to technical specifications of physical inspection."

Escrow closed in October 2003. Title to the Property was taken in the name of Adam Brand only. Subsequently, for financing reasons, Eliza Brand quitclaimed any interest she had in the Property to Adam. In 2006, plaintiffs signed a written agreement confirming their 2003 oral agreement that they were co-owners of the Property.

Plaintiffs and their family moved into the Property in November 2003. Later, plaintiffs learned that a large portion of their front lawn (disputed area) apparently was owned by CalTrans, and CalTrans had plans to construct an access road for the freeway

across the disputed area to within 20 feet of the front door of their residence. Plaintiffs believed that as a result of CalTrans's apparent ownership and plans for the road in the disputed area, the Property value was less than the purchase price and, if they had known about the disputed area, they would not have purchased the Property.

After unsuccessfully attempting to resolve their claims against Bray, Chung, Rabie, Revilla and RE/MAX informally through mediation, plaintiffs filed the complaint in the instant action in July 2005. They later filed a First Amended Complaint, which is the operative complaint for this appeal. The allegations pertain to the value or desirability of the Property at the time of the disclosures and sale. The causes of action against Chung and Rabie include breach of statutory duties of disclosure in Civil Code section 1102 et seq. and section 2079 with respect to real estate sales, fraud and negligent misrepresentation.[1] The trial court sustained the demurrer of Chung and Rabie to the cause of action for violation of Civil Code section 2079 and notice of ruling was filed in January 2006.

Prior to the beginning of trial, defendants filed their first amended trial brief. Their counsel requested the trial court to read the brief so that defendants could move for judgment at least as to Eliza Brand. At the beginning of the trial, outside the presence of the jury, defendants made an Evidence Code section 402 motion to address anticipated hearsay the Brands would offer regarding ownership of the disputed area. After a hearing, the trial court denied the motion.

At trial, Adam Brand testified that the only issue for him and Eliza as the buyers was the front yard, specifically its boundaries and size. The trial court excluded Adam Brand's 2005 refinance documents offered by Chung to impeach the Brands' testimony that the Property had diminished in value. As to each offered document except one, the trial court ruled the document was irrelevant and had no impeachment value. The court ruled that the Borrower Property Condition Certification could be used for impeachment

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[1] There were several named defendants, but only two of them, Chung and Rabie, are parties to this appeal.

purposes. The court then stated that the issue before the jury was the value of the Property at the time of purchase.

Over defendants' objections, the trial court allowed the Brands' expert witness, Alan D. Wallace (Wallace), to testify as to the standard of care of real estate agents and brokers. Defendants' initial objection was that no foundation had been presented with regard to CalTrans documents Wallace listed among the materials he reviewed. Plaintiffs' counsel told the court that Wallace was not going to present any specific testimony about CalTrans. The trial court overruled defendants' objection. Defendants did not object to Wallace's qualifications as an expert on the standard of care. Wallace did not give specific testimony about the CalTrans documents.

Wallace gave his general opinion that defendants' conduct with respect to plaintiffs "fell below the standard of care applicable to real estate professionals." One of the factors which led him to the opinion was that a real estate professional representing the seller must make a visual inspection of the property to be sold and Rabie's deposition testimony showed that he was at the Property three times but made no visual inspection. Wallace stated that "that clearly falls beneath the standard of care as required under Civil Code [section] 2079 for real estate professionals."

Another factor Wallace cited was that Rabie did not inquire of Bray about anything she wrote on the Transfer Disclosure Sheet (TDS), and such failure to inquire fell below the standard of care. Bray's statements about an encroachment and freeway expansion, in Wallace's opinion, had substantial significance. Wallace testified that he had "no clue" about the meaning of Rabie's disclosure on the TDS that "Buyer has to pay attention to technical specifications of physical inspection"; "technical specifications" was not a term of art.

Wallace found the tract map of the Property in Chung's files for the Brand transaction. Wallace testified that he would expect the seller's agent to have reviewed the tract map. He definitely would expect that Rabie would have reviewed the tract map in this case, in view of the letter from the Brands' agent stating that a large front yard was important to the buyers. The tract map showed that the Property was a rectangle the

same size as the adjoining lots, and there was a triangle of land, the disputed area, between the lot and the street. When the Property is viewed, it appears that the front yard extends to the street.

Wallace testified that when a real estate agent sees something unusual, like the discrepancy between the map and the physical appearance of the Property, that is called a "red flag." An agent is not expected to be a surveyor or appraiser but is expected to notice "red flags," potential issues, inquire about them, notify everyone involved and recommend that they take further action. Wallace testified that, from Rabie's deposition testimony, it appeared that he never looked at the tract map.

On cross-examination, Wallace responded that "sometimes" the standard of care for an agent or broker is to check the plot map against the property. As to title insurance, an agent may rely on the title report for the matters it covers, but something like the disputed area in the instant case would not be covered by the title insurance documents.

Wallace confirmed that the buyer's advisories given in the form purchase agreement and in Chung's additional written notice to buyers inform a buyer like Adam Brand of his responsibility to investigate boundary lines and lot size. Wallace stated that such buyer's advisories do not change his opinion on the standard of care in the instant case, in that they do not allow "an agent like Rabie to put his head in the sand . . . and say, 'You signed off . . . . I don't have to do anything.' . . . That's not what Civil Code [section] 2079 says." Defendants' counsel raised no objection to Wallace's statements about Civil Code section 2079 and did not question Wallace on its applicability.

Next, the Brands presented the testimony of Lewen Kuo (Kuo), a CalTrans project engineer with knowledge regarding work on the 405 Freeway near the Property. Kuo presented documents he stated were CalTrans's plans for construction of an access road near the Property. The trial court overruled Chung's Evidence Code section 402 objection to the documents. Kuo testified that the original plans were drafted with a date of September 15, 2003 and included a "double S" over the disputed area. He testified that the plans could not become final until approved in Sacramento, which occurred in February 2004, and that the "double S" had been removed from the plans. In response to

a question as to who owned the disputed area, Kuo testified that it appeared the property did not belong to Adam Brand but rather to either the city or the state.

In a sidebar conference during the Kuo testimony, the trial court stated that the question asking who owned the disputed area was irrelevant; the only issue was whether or not the CalTrans plans were in existence at the time of the purchase, whether defendants knew the plans existed, and whether defendants had an obligation to disclose the plans' existence such that their failure to do so was below the standard of care. The court also stated that there was no dispute that there had been a taking of the property, but that the taking was irrelevant because it was not part of the damages the Brands were seeking. The trial court subsequently excluded as irrelevant evidence offered by Chung that the plans were changed after the Brands purchased the property.

Plaintiffs called their neighbor, Yvonne Sorrentino (Sorrentino), to testify. After lodging a hearsay objection to an initial question by plaintiffs' counsel to Sorrentino as to what was talked about at a CalTrans meeting attended by Sorrentino, Bray and others, defendants' counsel agreed that Sorrentino could answer the question if the court would admonish the jury that the evidence was for a non-hearsay purpose. At the end of the testimony, the court stated: "That evidence is not offered for the truth of the matter stated . . . . It's offered for a non-hearsay purpose that that occurred." Continuing questioning thereafter, plaintiffs' counsel asked Sorrentino if pictures were shown and what they showed. Defendants made hearsay objections. The trial court overruled them, subject to a non-hearsay purpose admonishment. To defendants' hearsay objections to questions as to what the speakers spoke about at two CalTrans meetings, the trial court instructed Sorrentino that she could "just say what topic they spoke on." Over defendants' hearsay objections, the trial court also allowed, "for non-hearsay purposes," Sorrentino's testimony that at a CalTrans meeting, the CalTrans speakers said something that affected her property; they were talking about tearing down her house. The trial court applied the same ruling to Sorrentino's testimony that she talked to the Brands just after they moved in, and she asked them how they bought the house "knowing that all this work was going to be done." During Sorrentino's testimony, at sidebar, the court

said to counsel: "The point of calling [Sorrentino], I assume, was that the defendant [Bray] was present when this was discussed at the hearing. That's been established. Beyond that, it's irrelevant. And the details aren't relevant, as well."

The Brands called Norman Eichel (Eichel), a licensed appraiser, as an expert witness. Eichel testified to an irregularity in the Property, in that, as shown on the plat map, the Property was a rectangular lot and did not connect to the street. He testified that visually, however, there was an area in front of the lot that extended to the street (the disputed area). He testified that the plans for the "S" line across the disputed area, with a front yard of only nine feet for the Property, was "an exceedingly negative factor" affecting the value of the Property. Eichel testified further that he had extensive business experience in eminent domain appraisals and that, in his opinion, the CalTrans plans constituted a partial taking. He also testified that in his opinion, the disputed area was included in the appraisal [at the time of purchase], but he had no evidence that the appraiser had in fact included it.

Chung presented testimony from an expert witness that there was nothing in the conduct of Chung or Rabie that was below the standard of care of realtors. An appraisal expert witness for defendants testified that the value of the Property in 2003 was based on the legal lot line and did not include the disputed area. Additionally, the CalTrans plans in 2003 were tentative, purely speculative and thus could not have affected the value.

Counsel for defendants proposed calling a title officer to rebut Kuo's testimony about ownership of the disputed area. Counsel made an offer of proof to the trial court that the title officer would testify that the area was dedicated property which became dedicated upon the recordation of the subdivision land map in 1923 and remained dedicated at the time of trial.

In the offer of proof, Chung's counsel referred to defendants' first amended trial brief. The trial court acknowledged that it had not been able to obtain a copy of the brief and had not read it. During a brief recess, the trial court read the brief. The trial court ruled that testimony by the title officer as an expert as to ownership of the disputed area was irrelevant under Evidence Code section 352, in that the issue was the disclosure at

the time of the Brands' purchase. The court further stated that the probative value would be outweighed by the consumption of time involved to take the testimony and agreed with the Brands' counsel that the title officer was an undesignated expert. The court did not allow the title officer to testify.

DISCUSSION

Defendants' contentions are that the trial court abused its discretion "in refusing to allow testimony and argument as to dedication of the subject property, in allowing the testimony of Mr. Wallace with regard to a broker's obligation to investigate boundaries, in not dismissing Eliza Brand as a plaintiff and in its application of the hearsay rule."

A. *Standard of Review*

The majority of defendants' contentions pertain to the trial court's evidentiary rulings. Evidence Code section 350 provides: "No evidence is admissible except relevant evidence." A trial court has wide discretion in determining whether proffered evidence is relevant under the principles that, "[e]xcept as otherwise provided by statute, all relevant evidence is admissible" (*id.*, § 351), and "'[r]elevant evidence, . . . include[s] evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action" (*id.*, § 210). (*San Diego Gas & Electric Co. v. Davey Tree Surgery Co.* (1970) 11 Cal.App.3d 1096, 1103; *People v. Warner* (1969) 270 Cal.App.2d 900, 908.) Pursuant to Evidence Code section 352, a trial court "in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

A trial court abuses its discretion when its determination exceeds the bounds of reason, that is, where there is no reasonable basis for the trial court's decision, or where it contravenes uncontradicted evidence. (*Westside Community for Independent Living, Inc.*

v. Obledo (1983) 33 Cal.3d 348, 355.) In order to meet the requirements for reversal of a judgment on the basis of "a clear case of abuse" of discretion, an appellant must demonstrate that the judgment resulted in a "miscarriage of justice." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 331.)

B. ***Exclusion of Testimony on Dedication of the Property***

Defendants contend that the trial court abused its discretion in excluding testimony and argument with regard to the dedication of the Property. Defendants assert that, as a result, the jury heard the Brands' witnesses testify that the disputed area was owned by the city, the state or CalTrans, but no evidence from defendants to contrary.

Defendants claim that the dedication evidence would establish that, at the time of trial, Adam Brand owned the disputed area. Hence, they assert, the evidence should not have been excluded under Evidence Code section 352. In their first amended trial brief, defendants argued that Government Code sections 66477.1 and 66477.3 and Civil Code sections 831 and 1112 operated to dedicate the disputed area as a matter of law. Thus, according to defendants, the disputed area "was actually owned by Adam Brand, subject to that dedication."

We agree with the trial court that the dedication evidence was irrelevant. Ownership of the disputed area was not at issue. The issue was whether defendants were liable for nondisclosure of information about the existence of the CalTrans plans, whether finalized or tentative, to construct a roadway to within a few feet of the front door of the residence on the Property, across what appeared to be the large front yard and, if so, what damages the Brands incurred as a result of the nondisclosure.

Further, contrary to defendants' characterization, plaintiffs' witnesses did not testify definitively as to the identity of the owner of the disputed area, but rather indicated who they thought the owner probably was. Introduction of the dedication evidence could reasonably have been expected to cause additional confusion about ownership and its relevance or irrelevance to determining liability. A trial court has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its

admission will confuse the issues or mislead the jury. (Evid. Code, § 352.) We conclude that the trial court did not abuse its discretion in excluding evidence on dedication of the Property. (*Ibid*.) In view of our conclusion, we need not address defendants' related contentions that the trial court erred in ruling that expert testimony was required to establish the dedication and that it erred in excluding the testimony of the title officer called by defendants as an expert on dedication because defendants had not designated the title officer as an expert.

C. *Wallace's Testimony on the Duty of Seller's Broker to Buyer*

Defendants contend that plaintiffs' expert, Wallace, misapplied case law on the duty of real estate agents and brokers with respect to investigation of boundaries, and, therefore, the trial court abused its discretion in admitting Wallace's testimony over objections.[2] We conclude that there was no prejudicial error to defendants arising from the trial court's admission of Wallace's testimony.

None of defendants' objections pertained to Wallace's opinions that the conduct of Chung and Rabie was below the standard of care, the basis of his opinions, including his references to Civil Code section 2079, or Wallace's qualifications as an expert to render such opinions. Defendants' failure to object on these grounds forfeits the issue on appeal. (Evid. Code, § 353, subd. (a); *In re S.B.* (2004) 32 Cal.4th 1287, 1293; *Imperial Bank v. Pim Electric, Inc.* (1995) 33 Cal.App.4th 540, 546.) Defendants cross-examined Wallace about the legal duties of a real estate agent. Their counsel asked if Wallace knew of a case that set forth a duty such as he opined applied to defendants under the circumstances of this case. Wallace said he did not, but defendants directed no follow-up questions to him. Defendants did not request any instruction to the jury with respect to the issue they now raise on appeal.

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[2] The California Association of Realtors filed an amicus curiae brief in support of defendants on the issue of broker duty to investigate boundaries. The brief does not address any objection made by defendants to Wallace's testimony.

Further, defendants had the opportunity to rebut Wallace's testimony and its basis through testimony of their own expert and to argue to the jury that their expert's testimony was correct and Wallace was incorrect. If an expert witness "'"disclosed an ample knowledge of the subject to entitle his opinion to go to the jury, the question of the degree of his knowledge goes more to the weight of the evidence than to its admissibility." [Citations.]'" (*Donahue v. United Artists Corp.* (1969) 2 Cal.App.3d 794, 803.) Determining which, if either, expert was correct, including assessing credibility and weight of each expert's testimony, were matters for the jury, not the trial court, to determine. (*Kelley v. Trunk* (1998) 66 Cal.App.4th 519, 523-524.)

Wallace clearly stated that he was not rendering a legal opinion but rather an opinion on the duty of care owed under the specific facts provided to him about this case. He also made clear that his opinion did not pertain to any duty of a broker or agent to determine the boundaries or ownership of property being sold. Wallace referred to a duty to inquire about and/or disclose situations that raise "a red flag" specific to the property in a specific transaction about which the agent or broker knew or should have known, such as the inconsistency here between the tract map lot shape and the physical appearance of the property, together with knowledge of the plans actively being evaluated by CalTrans for use of the disputed area and the buyer's intent to acquire property with a large front yard for his small children.

We note that defendants' arguments go to whether Wallace's opinions correctly applied law regarding duties of a seller's broker and agent. They suggest that the trial court made a ruling on whether Wallace's opinions were correct under applicable law. Defendants do not cite to any part of the record where defendants asked the trial court to make a ruling on the correct law to be applied or any authority that the court had an independent duty to make such a ruling. We know of no such authority. Defendants may not raise such an issue for the first time on appeal. Defendants' contention that the

admission of the Wallace opinions regarding Rabie's duties to investigate constituted reversible error is without merit.[3]

D. ***Denial of Motion to Dismiss Eliza Brand***

Defendants contend that the trial court abused its discretion in not dismissing Eliza Brand. They claim that Eliza Brand did not have standing as a plaintiff, in that she had signed a quitclaim deed releasing her interest in the Property. We agree with defendants that "a quitclaim deed . . . passes whatever title or interest the grantor has in the property" "creates a presumption that the title to the property is held as shown in the instrument." (*In re Marriage of Broderick* (1989) 209 Cal.App.3d 489, 496.)[4] Nevertheless, we conclude that the trial court did not abuse its discretion in allowing Eliza Brand to participate and testify as a plaintiff. Eliza Brand and Adam Brand entered into a written agreement in 2006 confirming that they were co-owners of the Property. Pursuant to Family Code section 852, spouses may transmute property from ownership by one of them as separate property to joint ownership as community property by entering into a

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[3] Our holding with regard to defendants' claims of error against the trial court's admission of the Wallace testimony pertains only to evidentiary procedural matters. Just as below, we need not render an opinion on whether Wallace's testimony about defendants' duty of care was based upon a correct interpretation or application of the law. That issue is not before us.

[4] Defendants also assert Eliza Brand was not an equitable owner by virtue of her community interest, based upon *In re Marriage of Mathews* (2005) 133 Cal.App.4th 624 and Civil Code section 3050. The cited authority does not support the assertion. The issue in *In re Marriage of Mathews*, *supra*, 133 Cal.App.4th 624 was whether a husband who held a quitclaim deed signed by the wife had met his burden of proof to rebut the presumption of undue influence that arose under Family Code section 721 in the interspousal transfer. (*Id*. at pp. 628-629.) That is not an issue in the instant case. Civil Code section 3050 also is inapplicable; it provides that a person who pays the owner part of the purchase price of real property has a special lien on the property equal to the amount paid, such as in an action for rescission.

written agreement to do so. (Fam. Code, § 852, subd. (a).)[5] The 2006 agreement was effective as a transmutation and thus operated to rebut the presumption under Evidence Code section 662 that title was held as shown on the deed. As an owner of the Property, Eliza Brand had standing as a plaintiff. The trial court did not abuse its discretion in failing to dismiss her from the action.

E. ***Trial Court's Application of the Hearsay Rule***

Defendants contend that the trial court abused its discretion in admitting, over their hearsay objections, Eliza Brand's testimony about problems with the Property, that it was worth less than the purchase price, that CalTrans had plans to build an access road, about her neighbors' statements to her regarding the existence of the plans, and that she attended a meeting with a CalTrans representative to whom she directed a question. We disagree.

Evidence Code section 1200, subdivision (a), provides that "'[h]earsay evidence' is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated." Hearsay evidence is inadmissible unless an exception applies. (*Id*., subd. (b).)

Contrary to defendants' claim, the trial court sustained a number of defendants' hearsay objections, with the result that Eliza Brand was not allowed to testify regarding what her neighbors said to her or specific matters concerning the CalTrans plans, her communications with CalTrans and her own statements made at a CalTrans meeting.

Further, some of defendants' hearsay objections were made in relation to questions involving the CalTrans plans on the grounds that the plans had not been admitted into evidence. The trial court obtained specific assurances from plaintiff's counsel that the

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[5] Family Code section 852, subdivision (a), provides: "A transmutation of real or personal property is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected."

CalTrans plans would be authenticated before they were admitted into evidence.[6] In overruling these and other hearsay objections by defendants to questions to Eliza Brand, the trial court also instructed that her response must be limited to yes or no, and could not include any content. As a result, Eliza Brand was allowed to testify about how she found out there was going to be CalTrans meetings, when and where the meetings were held that she attended and the types of things that occurred at the meetings. She was not allowed to give specifics of CalTrans plans or the content of statements made by her or other persons at the CalTrans meetings. Evidence an event has occurred is not hearsay where, as here, its occurrence is significant irrespective of the content of statements made or documents presented at the event. (*Taylor v. Centennial Bowl, Inc.* (1966) 65 Cal.2d 114, 125.) The trial court did not abuse its discretion in allowing the testimony. (*Ibid*.)

The trial court properly allowed Eliza Brand to testify as to her personal reactions and beliefs. They were not being offered to establish the truth of any fact and, hence, did not constitute inadmissible hearsay evidence. (Evid. Code, § 1200.) She was allowed to testify about her reaction to what was presented at the meeting, without testimony about the content presented. As to property value, her testimony was limited to her belief as to the impact of the CalTrans plans on value of the Property that she had "*felt* that one of the selling values of the house was the big front yard. *And if* that were gone and traffic was much closer to the house, we thought it would be much more difficult to sell." (Italics added.) This did not constitute impermissible lay opinion regarding the value of the Property. (See *People ex rel. Dept. Public Works v. Lipari* (1963) 213 Cal.App.2d 485, 493.) The trial court did not abuse its discretion in allowing this testimony. (*Ibid*.)

Next, defendants claim that the trial court abused its discretion in admitting Sorrentino's testimony as to statements made by unidentified CalTrans officials and by her husband, in that the testimony was not offered for non-hearsay purposes, as argued by plaintiffs. However, the record shows that defendants agreed to admission of the

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[6] Counsel explained that the CalTrans authentication witness was scheduled for that day but had not been able to come. The plans were authenticated on a later date.

testimony so long as the trial court admonished the jury that it was offered not for the truth of the matter asserted but for non-hearsay purposes of establishing that the events occurred. Each time the trial court allowed Sorrentino to respond to such a question after a hearsay objection, the trial court either gave an admonishment to the jury or instructed the witness to respond only by stating the topic, not the content, of statements made. The trial court did not abuse its discretion in allowing the testimony, in that it was offered to show that events occurred. (*Taylor v. Centennial Bowl, Inc.*, *supra*, 65 Cal.2d at p. 125.) Following each response or admonishment, defendants did not raise any additional objection regarding the hearsay or non-hearsay use of the testimony or the inadequacy of the trial court's limiting instructions. Defendants forfeited the right to assert the issue on appeal. (*In re S.B.*, *supra*, 32 Cal.4th at p. 1293; *Imperial Bank v. Pim Electric, Inc.*, *supra*, 33 Cal.App.4th at p. 546.)

Lastly, defendants contend that the trial court erroneously admitted hearsay evidence of ownership and alleged CalTrans plans that were not in evidence. However, defendants provide no citations to the record identifying the disputed rulings. We have no duty to search the entire record for such instances. It is an appellant's responsibility to include the relevant citations to the record. (Cal. Rules of Court, rule 8.204(a)(1)(C).) Failure to do so operates to waive the associated issues on appeal. (*City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239 and fn. 16.) We decline to consider the contention.

Although unrelated to any hearsay ruling, in the hearsay portion of their reply brief, defendants also claim that the trial court abused its discretion in refusing to allow defendants to present evidence regarding the increased value of the Property contained in documents from Adam Brand's refinancing of the Property in 2005, two years after his purchase of the Property. As a result, defendants assert, they were not allowed to impeach Adam Brand's testimony about the impairment of the Property and to prove absence of damages.

Defendants fail to acknowledge that the trial court admitted part of the 2005 refinancing documents, specifically the Borrower Property Condition Certification, to

impeach Adam Brand's testimony. We find no error in the trial court's refusal to admit the remainder of the 2005 refinancing documents as to appreciation of the Property. As we previously discussed, the value of the Property at issue was solely the value at the time of purchase in 2003. As plaintiffs point out, the proper measure of damages for fraud in the sale of property is the difference between what the defrauded purchaser paid and the value of the property purchased. (Civ. Code, § 3343.) Thus, evidence of the Property's value in 2005 was irrelevant and of no probative value. (Evid. Code, § 350.) The trial court did not abuse its discretion in excluding the 2005 refinancing documents.

F. *Reversal Not Warranted*

Defendants contend that the judgment must be reversed on the basis that it is a clear miscarriage of justice, in that the jury reached a verdict inconsistent with the law due to the trial court's abuse of its discretion in its evidentiary rulings. We found no merit in any of defendants' contentions concerning the trial court's exercise of discretion to admit or exclude evidence. "A judgment may not be reversed on appeal, . . . unless 'after an examination of the entire cause, including the evidence,' it appears the error caused a 'miscarriage of justice.' (Cal. Const., art. VI, § 13.) When the error is one of state law only, it generally does not warrant reversal unless there is a reasonable probability that in the absence of the error, a result more favorable to the appealing party would have been reached. [Citation.]" (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 574.) Such is not the case here.

DISPOSITION

The judgment is affirmed. Plaintiffs are to recover their costs on appeal.

NOT TO BE PUBLISHED

JACKSON, J.

We concur:

PERLUSS, P. J.

ZELON, J.